UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD REGION 8

RWJ CORPORATION

Employer

and Case No. 8-RC-16909

ROAD SPRINKLER FITTERS, LOCAL 669, UA, AFL-CIO a/w UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE U.S. AND CANADA, AFL-CIO

Petitioner

REPORT ON CHALLENGES

Pursuant to a Petition filed on August 16, 2007, and a Stipulated Election Agreement approved by me on October 11, 2007, an election was conducted on November 2, 2007, among the employees in the following described unit:

All full-time and regular part-time, lead men, fitters, helpers, service tech field employees and warehouse employees employed by the Employer at its 1945 South 12th Street, Sebring, Ohio facility and excluding all other employees including all designers, salespersons, truck drivers, office clericals, and all other professional employees, guards and supervisors as defined in the Act.

The payroll period for eligibility was that ending October 5, 2007. The Tally of Ballots issued after the election shows that of approximately nineteen (19) eligible voters, nineteen (19) cast ballots, of which nine (9) were cast for and six (6) against the Petitioner. There were four (4) challenged ballots, a number sufficient to affect the results of the election.¹

¹ Both the Petitioner and the Employer filed timely Objections to Conduct Affecting the Results of the Election. In a separate document, I ordered a hearing on the Petitioner's Objection 30 and Additional Objectionable Conduct and dismissed the Employer's Objection 1. The hearing on the Objections was ordered to be consolidated with the hearing in Case Nos. 8-CA-37361 and 8-CA-37509 before an Administrative Law Judge on April 1, 2008.

Pursuant to the provisions of Section 102.69 of the Board's Rules and Regulations, a preliminary investigation of the challenges has been made, and I hereby make the following findings and recommendations: ²

<u>Tony Bolen</u>: Bolen is not an eligible voter and the challenge to his ballot should be sustained.

<u>Bart Kelly and Barry Saeger</u>: Kelly and Saeger are eligible voters and the challenges to their ballots should be overruled.

THE CHALLENGES

Tony Bolen

Tony Bolen's ballot was challenged by the Board Agent because his name did not appear on the Excelsior list.

The Petitioner filed the charge in Case No. 8-CA-37361 on August 23, 2007. The charge alleged, *inter alia*, that Tony Bolen was discharged by the Employer on or about July 10, 2007 in retaliation for his activities on behalf of the Petitioner. On January 24, 2008 the Petitioner filed an amended charge withdrawing, among other things, the allegation relative to Bolen's termination.³

Therefore, because the evidence establishes that Bolen was not employed during the payroll period for eligibility nor on the date of the election, I shall recommend that the challenge to his ballot be sustained.

Bart Kelly

The Petitioner challenged the ballot of Bart Kelly based on its contention that he was a supervisor within the meaning of Section 2(11) of the Act. During the investigation, the Petitioner took the position that based on his title of Warehouse Manager, Kelly serves in a supervisory capacity. The Petitioner was unable to provide evidence to support that assertion. The investigation failed to reveal any evidence that Kelly hires, fires, disciplines, assigns work, or responsibly directs other employees.⁴

The Employer's position is that Kelly was an eligible voter. According to the Employer, despite his title of "Warehouse Manager," Kelly did not have the authority to fire, hire, or discipline employees and, therefore, was not a supervisor within the meaning of Section 2(11) of the Act.

² The challenge to the ballot of Herbert "Jim" Trainer will be dealt with in a separately issued Order directing hearing.

³ The charge was also amended on September 20, October 3 and November 8, 2007.

⁴ Investigation revealed that although Kelly does hold the title of "Warehouse Manager" he has no supervisory or managerial responsibilities.

Therefore, I recommend that the challenge to Kelly's ballot be overruled and that his ballot be opened and counted.

Barry Saeger

The Petitioner challenged the ballot of Barry Saeger, a leadman, based on its contention that he was a supervisor within the meaning of Section 2(11) of the Act. During the challenge investigation, the Petitioner was unable to provide evidence to show that Saeger hires, fires, disciplines, assigns work, or responsibly directs other employees. Further, no evidence was provided or adduced during the challenge investigation to suggest that Saeger occupies a position different from the leadmen employed by the Employer. Leadmen are part of the unit and all of the other leadmen voted without challenge, this challenge is overruled.

The Employer's position is that Saeger was an eligible voter. According to the Employer, Saeger is one of seven leadmen employed by the Employer and that all other leadmen voted without challenge. The Employer stated that Saeger, as a leadman, does not hire, fire, or discipline employees and, therefore, was not a supervisor within the meaning of Section 2(11) of the Act.

Therefore, I recommend that the challenge to Saeger's ballot be overruled and that his ballot be opened and counted.

RECOMMENDATIONS

IT IS HEREBY RECOMMENDED that the challenge to the ballot of Tony Bolen be sustained.

IT IS HEREBY RECOMMENDED that the challenge to the ballots of Bart Kelly and Barry Saeger be overruled and that the ballots be opened and counted.⁵

Dated at Cleveland, Ohio this 20th day of February 2008.

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⁵ Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099—14th Street, N.W., Washington, D.C. 20570. Exceptions must be received by the Board in Washington by March 5, 2008. Under the provisions of Section 102.69(g) of the Board's Rules and Regulations, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections and/or challenges and which are not included in this report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to attend to the submission of the Board copies of evidence timely submitted to the Regional Director and not included in the report shall preclude a party from relying upon that evidence and any subsequent related unfair labor practice proceeding.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board Region 8